The court of appeals, treating the denial of the stay as an interlocutory order refusing an injunction, affirmed, holding that the Army procedure provided petitioner with sufficient protection of his constitutional rights and that a full hearing was not constitutionally required.

Neither the relevant statute, 10 U.S.C. § 673(a), nor the regulation, A.R. 135–91, gives a reservist a right to a personal hearing. However, the regulation does allow a reservist to submit in writing all appropriate evidence that he may wish to present. This procedure is more than adequate to permit a reservist who has failed to attend training with his unit to present his reason for the absence, and the court below correctly held that this satisfies due process. See *Gionastio* v. *Whyte,* 426 F. 2d 908 (C.A. 2), certiorari denied, 400 U.S. 941; *Morse* v. *Boswell,* 289 F. Supp. 812, 816 n. 4 (D. Md.), affirmed, 401 F. 2d 544 (C.A. 4), certiorari denied, 393 U.S. 1052.

Furthermore, since petitioner did not submit a timely reason for his absence from the training session, the unit commander was compelled to conclude that petitioner's non-appearance at the active duty training constituted unsatisfactory participation. Army Regulations provide that an unexcused absence from annual training constitutes unsatisfactory service, and that excuses for an absence must be received within 14 days of the absence. A.R. 135–91, paras. 9, 11. Under

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tioner's military personnel records, petitioner's letter of appeal and several forwarding command endorsements, recommended that petitioner's appeal be disapproved. This recommendation was ratified by the convening authority.

these circumstances there is no doubt about petitioner's default in his reserve obligation. Petitioner, therefore, has not been prejudiced by the absence of a formal hearing.

For the foregoing reason, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1971.

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IN THE

Supreme Court of the United States

No. 70-217

STEPHEN C. ANSTED,

Petitioner,

v.

STANLEY R. RESOR, *et. al.*,

Respondent.

PETITION FOR A REHEARING AFTER DENIAL OF CERTIORARI

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Appellant-petitioner, Stephen C. Ansted, hereby petitions this Honorable Court for a rehearing after the denial of his Petition for Certiorari dated October 12, 1971, pursuant to Rule 58 of the Rules of this Court.

Petitioner asks for rehearing on the following grounds:

That the respondent, United States Army, has in 1971, changed its regulations pertaining to this case. Regulation AR135-91 has been revised providing for a hearing to be granted to a reservist in a situation such as that which faced the petitioner. This action by the respondent reinforces the

case of the petitioner for a hearing to deny the petition that right which the respondent itself has deemed necessary would promote an injustice against the petitioner. Further, that the decision in *Goldburg v. Kelly* (1970) ___ U.S. ___, 125 L.Ed.2d 287 is the substantial case in point providing for the proper due process to be afforded a citizen in a confrontation with a governmental agency. The contention by the government that submission in writing of evidence by the petitioner is adequate to provide the petitioner with due process is false.

WHEREFORE, petitioner prays that his Petition for Rehearing be granted and that such rehearing be granted on his original petition for certiorari.

Respectfully submitted,

George T. Popcheff

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November 5, 1971

CERTIFICATE OF COUNSEL

Counsel for the petitioner herein attests to the Court that the foregoing Petition for Rehearing filed pursuant to Rule 58 of the Rules of the Supreme Court of the United States was presented in good faith and not for the purposes of delay. Further, that the foregoing petition is restricted to the grounds set forth in said petition.

Respectfully submitted,

George T. Popcheff

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